

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Percy Lavae Bacon,

Case No. 2:18-cv-00319-JAD-NJK

Plaintiff

James Cox, et al.,

Defendants

Order Dismissing Action and Closing Case

Pro se plaintiff and parolee Percy Lavae Bacon brought this civil-rights action to redress

9 events that he claims occurred while he was an inmate at Nevada's Southern Desert Correctional

10 Center. Successful motions by the defense left only the claims against Defendant Robert

¹¹ Bannister. Because Bannister was not represented by counsel, the court's screening order¹

12 required Bacon to file a motion requesting issuance of a summons for Bannister² by January 22,

¹³ 2019, but Bacon filed no such motion. So, on November 27, 2019, the court gave Bacon until

14 December 27, 2019, to show cause in writing **"why the remainder of this action should not**

¹⁵ dismissed for failure to timely serve the last-remaining defendant Robert Bannister.”³ Bacon

16 was expressly warned that, if he failed "to show cause with a timely filed Response to Order to

17 | Show Cause, this case will be dismissed under FRCP 4m without further prior notice.”⁴

⁵ Bacon did not show cause or request to extend his deadline to do so. District courts

19 have the inherent power to control their dockets and “[i]n the exercise of that power, they may

1 ECF No. 30.

² *Id.* at 13.

³ ECF No. 75 at 3.

⁴ *Id.*

⁵ I note that the court's order was part of its adoption of a November 8, 2019, magistrate judge's report and recommendation (R&R). ECF No. 74. Although Bacon ultimately filed objections to

1 impose sanctions including, where appropriate . . . dismissal” of a case.⁶ A court may dismiss an
2 action based on a party’s failure to prosecute an action, failure to obey a court order, or failure to
3 comply with local rules.⁷ In determining whether to dismiss an action on one of these grounds,
4 the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the
5 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
7 alternatives.⁸

8 The first two factors, the public’s interest in expeditiously resolving this litigation and the
9 court’s interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
10 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
11 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
12 prosecuting an action.⁹ A court’s warning to a party that its failure to obey the court’s order will
13 result in dismissal satisfies the fifth factor’s “consideration of alternatives” requirement,¹⁰ and

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15 that report, ECF No. 77, they were nearly a month late and arrived only after the court adopted
16 the R&R and entered judgment. ECF Nos. 75 (order adopting R&R), 76 (judgment). Those
17 objections are disregarded as untimely. But even if I had considered those objections on their
merits and generously treated them as a motion for reconsideration or to alter or amend the
judgment, they fall far short of establishing any basis for such relief.

17 ⁶ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

18 ⁷ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

22 ⁸ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
Ferdik, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

23 ⁹ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

1 that warning was given here.¹¹ The fourth factor—the public policy favoring disposition of
2 cases on their merits—is greatly outweighed by the factors favoring dismissal.

3 Accordingly, IT IS HEREBY ORDERED that the remainder of **this action is**
4 **DISMISSED** without prejudice under FRCP 4m. The Clerk of Court is directed to **ENTER**
5 **JUDGMENT ACCORDINGLY** and **CLOSE THIS CASE.**

6 Dated: February 19, 2020

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8 U.S. District Judge Jennifer A. Dorsey
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¹¹ ECF No. 75.